No. 09-424

Supreme Court, U.S.
FILED
DEC - 2 2009
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DERREK PANNELL,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

Petition For Rehearing
of Order Denying
Petition For Certiorari

I, Derrek Pannell, Appellant, presents this petition for a rehearing of this courts order dated November 9, 2009, denying the petition for a Writ of Certiorari to the United States Court of Appeals For the Second Circuit, and, in support thereof, respectfully shows that this courts intervening supervision is needed for the reasons set forth:

The decision rendered by the Second Circuit Court of Appeals is violative of fundamental principals of a governments general power to exercise authority over all persons and things within its territory, required under both the United States and New York State

Constitutions. Without this courts supervisory control 18 USC § 2114 will continue to be exercised in a manner which congress never intended, resulting in providing the federal government with a valid commission to do business in a state when such consent was not given and a jurisdictional fact is lacking.

It is irrefutable that congress was constitutionally proper enacting 18 USC § 2114, rather, it is federal prosecutors who manipulated the statues true intent and limited applicability. The bill used to enact § 2114 is H.R. Rep. No. 582, 74th Cong. 1st Sess., and the purpose of the bill is to "bring within the provisions of the penal code the crime of robbing or attempting to rob custodians of government moneys". The bill is absent of any language or enumerations given to the federal government in order to usurp the State of New York of its police power, so congress never meant for § 2114 to be applied extraterritorial.

Assuming arguendo that § 2114 was to be applied outside of the territorial jurisdiction of the United States, then under which Constitutional Article or Amendment would uphold a prosecution pursuant to § 2114 when such robbery or 'custodian of any money or other property of the United States', is within the territory of the State of New York?

When the robbery itself, the custodian, money, or other property lacks a nexus to a geographic area where federal judicial authority may be exercised, said crime belongs to the courts of that state in which the crime was committed, U.S. Const. Art. III Sec. 2 Cl. 3.

Federal prosecutors have treated § 2114 as a cession of State authority simply cause chattel is cloaked with a federal or United States title, and if this court fails to act under its supervisory control the continuation of federal prosecutions pursuant to § 2114 outside of the statues true applicable limits would move us closer to a national police force threating the independence of a state, coupling the rivival of 'general federal common law' which this court has prohibited, **ERIE v. TOMPKINS**, 304 us 64 (1938).

The language congress used in § 2114 purports a plain meaning that the statue was not intended to be used outside of the territory of the United States. Congress defined the term United States in 18 USC § 5 on how it is to be used in § 2114 which states;

> "United States, as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the canal zone".

If congress intention were to alter the Constitutional balance between State and Federal governments, 'congress must make such intentions unmistakingly clear in the language of the statue', **ATASCADERO STATE HOSPITAL v. SCANLON**, 105 s.ct 3142 (1985), **GREGORY v. ASHCROFT**, 115 L.ed 2d 410 (1991), and such intent clearly is absent in the langauge of § 2114. The Second Circuit stated, "unless contrary intent appears federal statues apply only within the territorial jurisdiction of the United Sates", **UNITED STATES v. CONTRONI**, 527 F2d 708,711. Therefore, since congress has chosen not to insert any language for § 2114 to be applied extraterritorial

it is non-elective for prosecutors not to use the statue beyond such fact or as they see fit. In the instant matter, petitioner committed no acts that was within the territorial jurisdiction of the United States nor did any custodian or money have a nexus to the territorial jurisdiction of the United States for a U.S. Attorney to seek a prosecution pursuant to § 2114. Learned judges have fallen victim to the repetitive masquerade of prosecutions by U.S. Attorneys. The unconstitutionality of the course pursued by prosecutors is clear and an invasion of the authority of the state and to that extent, a denial of its independence which should compel this court to intervene.

UNITED STATES CONSTITUTION
ART. I SEC. 8 CL. 17

> "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten Miles square) as may, by cession of particular states and the acceptance of congress become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful buildings;"

In the instant matter, the 'other needful building' which is the locus delicti was not purchased by the consent of the legislature of the state, making State authority the 'exclusive legislation' for any criminal process in said building, and § 2114 cannot be an empowered tool used to inflict punishment where the right to punish is not given.

The United States Constitution does not cede a police power to the federal government, and congress recognized that no jurisd-

iction exists in the United States to enforce federal criminal laws until consent to accept jurisdiction has been filed and accepted as congress provided in 40 USC § 3112. The extraterritorial coverage of § 2114 is not found in the statues text, structure or legislative history and "the acts of congress normally do not have extraterritorial application unless such an intent is clearly manifested", see **SALE v. HAITIAN Ctrs. Council, INC**, 509 us 155, 188 (1993).

The Second Circuits conclusion that Art. I Sec. 8 Cl. 7 (To Establish Post Offices and Post Roads) when attached to Art. I Sec. 8 Cl. 18, provides the federal government with the adjudicative authority to seek punishment is flawed for numerous reasons. First, Cl. 18 is a caveat which is used to create legislation for all of the enumerations ceded in the Constitution and its attachment to Cl. 7 does not provide a police power or extraterritorial jurisdiction. The Second Circuit failed to recognize Cl. 17, which clearly states that such legislation is not to be exercised within a state without the states consent. The power associated with Cl. 7 is defined in Title 39. Second, the post office in question failed to have any conection to the territorial jurisdiction of the United States, making the federal courts subject matter secondary and without adjudicative authority. Third, it seems that the Second Circuit will remain with its decisions in **UNITED STATES v. REID**, 517 F.2d 953 (1975), and **UNITED STATES v. RIVERA**, 513 F.2d 519 (1975), that § 2114 requires a postal nexus although this court has stated

in **GARCIA v. UNITED STATES**, 469 US 70, that "the legislative history shows no intent by congress to limit the statue to postal crimes". The summary order issued by the Second Circuit Court of Appeals stated that congress acting on its authority to enact 18 USC § 2114, "congress simply exercised the long recognized authority conferred upon it by the Constitution to establish Post Offices and Post Roads, U.S. Const. Art. I Sec. 8 Cl. 7..." raises two concerns. First, it is a contradiciton to the decision of **GARCIA**. How can § 2114 not require a postal nexus and apply to all forms of government as stated in **GARCIA**, but be enacted pursuant to a specific enumeration -- to establish Post Offices and Post Roads? Would that not be a expansion of an enumeration? Second, even if § 2114 was enacted pursuant to Cl. 7 the fact remains that, such legislation is not controlling or the substantive law of the offense, U.S. Const. Art. I Sec. 8 Cl. 17. The robbery of a post office pertaining to the details of this crime is a matter of local concern, where such post office failed to have a territorial nexus to the jurisdiction of the United States by provided by congress in 40 USC § 3112, and the enactment of §2114 cannot be a usurpation of State authority.

/S/ D Pannell
Derrek Pannell

Dated: December 2, 2009

CERTIFICATE OF SERVICE

I, Derrek Pannell, Appellant, hereby certify thta I am this day, December 2, 2009, serving true and correct copies of the foregoing **PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI**, via first class mail, with an adequate amount of postage, pursuant to the "prison mailbox rule" enuciated in **HOUSTON v. LACK**, 487 US 266 (1988), as follows:

United States Supreme Court
1 First Street N.E.
Washington DC 20543

United States Department of Justice
Office of the Solicitor General
Washington DC 20530

The foregoing is in compliance with 28 USC § 1746.

Respectfully Submitted,

Derrek Pannell
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Dated: December 2,2009